Office-Supreme Court, U.S.
FILED
MAY 7, 1963
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. [redacted]

SPENCER M. ANDERSON, ET AL., AND ARTHUR MORGAN, ET AL., *Petitioners*,

v.

PANAMA CANAL COMPANY, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CHARLES E. RAMIREZ,
P. O. Box 86,
Balboa, Canal Zone,
WILLIAM S. TYSON,
821-15th Street, N. W.,
Washington 5, D. C.
Counsel for Petitioners.

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement of the Case	3
Reasons for Granting the Writ	4
Conclusion	10
Appendix—A—Statutes	11, 12
B—Opinions of the Court of Appeals	13-22

Citations

Cases:

F.T.C. v. A.P.W. Paper Co., Inc., 328 U.S. 193	9
General Motors Acceptance Corp. v. U.S., 286 U.S. 49	9
Hearne v. U.S., 107 Ct. Cls. 335, Certiorari denied, 331 U.S. 858	5, 7
Helvering v. Bliss, 293 U.S. 144	9
Panama Canal Co. v. Anderson, et als, 312 F.2d 98	1
Powell v. U.S. Cartridge Co., 339 U.S. 497	8
Pasailas v. National City Bank, 296 U.S. 497	9
Red Rock v. Henry, 106 U.S. 596	9
Sinclair Refining Co. v. Atkinson, 370 U.S. 195	4, 9
Spencer M. Anderson, et al; and Arthur Morgan, et al. v. Panama Canal Company, 194 F. Supp. 765	1
Tennessee Coal, Iron and R. Co. v. Muscoda Local No. 123, 321 U.S. 590	9
U.S. v. Borden Co., 308 U.S. 188	9
U.S. v. Townsley, 323 U.S. 557	5, 6, 7
Walling v Patton Valley Transp. Co., 134 F.2d 945	8

STATUTES AND OTHER AUTHORITIES

	Page
Act of March 28, 1934; Sec. 23, 48 Stat. 522, 5 U.S.C.A. 673c (Thomas Amendment)	2 et seq.
Act of September 26, 1950, ch. 1049, 64 Stat. 1038	6
Canal Zone Code,	
Title 2, Section 248	2 et seq.
Title 3, Section 141 (1962 Revision)	3
Title 4, Section 132	3
Civil Service Retirement Act, 63 Stat. 475, 5 U.S.C.A. 740	8
Comptroller General Decision, 31 Comp. Gen. 87	6
Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U.S.C.A. 201-219	4
Federal Unemployment Compensation Act, 68 Stat. 1130	8
Federal Employees Compensation Act, 39 Stat. 742; 63 Stat. 854; 5 U.S.C.A. 751 et seq.	8
Federal Employees Pay Act of 1945, 59 Stat. 295, 5 U.S.C.A. 901-948.	2 et seq.
Government Employees Group Life Insurance Act, 68 Stat. 736, 5 U.S.C.A. 2091	8
House of Representatives Report No. 726 on H.R. 3393, 79th Congress, 1st Session (1945)	5
Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C.A. 104	4
Portal-to-Portal Act of 1947, 61 Stat. 84, 5 U.S.C.A. 251-262	9
Public Law 85-550, July 25, 1958, 72 Stat. 405 (Canal Zone Wage and Employment Practices Act)	6
United States Code Annotated, 28 U.S.C.A. 1292 (b)	2 et seq.
Walsh-Healey Public Contracts Act, 49 Stat. 2036, 41 U.S.C.A. 35-45	4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No.

SPENCER M. ANDERSON, ET AL., AND ARTHUR MORGAN, ET AL., *Petitioners*,

v.

PANAMA CANAL COMPANY, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on January 9, 1963, reversing the judgment of the District Court for the Canal Zone.

Opinions Below

The opinion of the Court of Appeals is reported at 312 F.2d 98 and is printed in Appendix B at pp. 13-20.

The opinion of the United States District Court for the Canal Zone is reported at 194 Fed. Supp. 765 and is set out at R. 36.[1]

---

[1] References preceded by "R." are to the Record as printed for use of the Court below, ten copies of which have been filed here.

Jurisdiction

The judgment of the Court of Appeals for the Fifth Circuit (Appendix B, p. 21) was entered January 9, 1963. A timely petition for rehearing was filed and was denied on February 11, 1963 (Appendix B, p. 22). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether petitioners are subject to Section 23 of the Act of March 28, 1934, 48 Stat. 522, 5 U.S.C.A. 673(c), and entitled to have their regular hours of labor computed in accordance with the requirements of that statute.

2. Whether the Court should review and pass upon the compensability of duties performed by petitioners in traveling on respondent's waterborne conveyances, which the District Court following decisions of this Court, clearly found to constitute regular hours of labor.

3. Whether the Court of Appeals should have remanded the case to the District Court for consideration of petitioners' entitlement to compensation under Section 248 of Title 2, Canal Zone Code, since the District Court had held petitioners subject not only to Section 23 of the Act of March 28, 1934, but also to Section 248 of Title 2, Canal Zone Code.

Statutes Involved

The statutory provisions involved are Section 23 of the Act of March 28, 1934, 48 Stat. 522, 5 U.S.C.A. 673c, Sections 102(c), 102(d) and 606 of the Federal Employees Pay Act of 1945, 59 Stat. 295, 5 U.S.C.A. 902c, 902d and 946, and Section 248 of Title 2 of the Canal Zone Code. They are printed in Appendix A infra, pp. 11, 12.

Statement

This action was initiated in the United States District Court for the Canal Zone on January 5, 1959 (R. 1, 7) by 171 employees working at hourly rates of pay on dredges of respondent Company. They seek to recover compensation under the provisions of the Thomas Amendment, Section 23 of the Act of March 28, 1934, 48 Stat. 522, 5 U.S.C.A. 673(c) and Section 248, Title 2 of the Canal Zone Code (R. 5, 8, 9, 32, 37) for the ten minutes to two hours which they spend each day in traveling over water to and from respondent's dredges in conveyances owned, operated and controlled by respondent.

The jurisdiction of the District Court was invoked under Section 132, Title 4 (Section 141, Title 3, 1962 Revision) of the Canal Zone Code. Respondent contends: first, that petitioners are not subject to the Thomas Amendment because they are "vessel" employees under Section 102i and 606 of the Federal Employees Pay Act of 1945 (59 Stat. 295, 5 U.S.C.A. 902d and 946) and, second, that their water-borne travel does not constitute regular hours of labor.

By stipulation the trial in the District Court was limited to the question of liability (R. 37, 69).

The District Court held that petitioners are subject to the Thomas Amendment and Section 248, Title 2 of the Canal Zone Code (App. B 14), that their over-water travel has all of the indicia of work, that it should be included in computing their regular hours of labor and that they are entitled to be compensated for such work. Although the District Court was convinced that its opinion on the issues was "legally sound and correct" (R. 101), it nevertheless certified the two questions of the applicability of the Thomas Amendment and the compensability of their over-water travel, to the Court of Appeals for the Fifth Circuit under the

statutory provision for interlocutory appeals, 28 U.S.C.A. 1292(b). (R. 101-103).

The Court below, by a two to-one decision (App. B 13-17) with a strong dissent from Judge Rives (App. B 18-20) reversed the judgment of the District Court, and held that the Thomas Amendment did not protect petitioners because it had been impliedly repealed as to them by Sections 902d and 606 of the 1945 Employees Pay Act (5 U.S.C.A. 902d and 946). The Court of Appeals did not pass upon the compensability of the over-water travel of petitioners, although the dissenting Judge stated that he agreed in other respects with the opinion of the District Court. It also failed to pass upon the District Court's ruling that petitioners were also subject to Section 248, Title 2, of the Canal Zone Code.

Reasons for Granting the Writ

1. The resolution of the questions involved here is extremely important to the implementation of our national labor policy of a 40-hour workweek which has been established over the years by the laws enacted for the benefit of the workers of this country, including Federal employees.

In *Sinclair Refining Co.* v. *Atkinson*, (1962) 370 U.S. 195, this Court was concerned over the impact of subsequent legislation upon Section 4 of the earlier Norris-LaGuardia Act (29 U.S.C.A. 104). Similarly here, the effect of a subsequent Act (Federal Employees Pay Act of 1945) on an earlier Act, the Thomas Amendment, is in issue. The Thomas Amendment constitutes an important segment of our national labor policy, since it was the first significant legislation establishing a forty-hour workweek. It was followed in 1936 by the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C.A. 35-45) and in 1938 by the Fair Labor Standards Act (52 Stat. 1060, 29 U.S.C.A. 201-219).

These later acts extended the scope of the forty-hour work week to virtually all employees.

The basic effect of the decision of the lower Court is to remove large numbers of employees from the protection provided for them by the Thomas Amendment of receiving true time and one-half overtime for working beyond the nationally established forty-hour workweek. Moreover, though incongruous, this has been accomplished by applying provisions of the Federal Employees Pay Act of 1945, a statute enacted for remedial purposes. The majority decision of the Court below departs from the firm national policy of the forty-hour workweek and will deprive many employees of true time and one-half overtime compensation.

2. In *United States v. Townsley*, 323 U.S. 557, 559 (1945), this Court held that employees of the Panama Canal (including some of the particular petitioners here (R. 93, 94)) who were employed on dredges were engaged in the "trades and occupations" within the meaning of the Thomas Amendment (Sec. 23 of the Act of March 28, 1934, 5 U.S.C.A. 673c) and thus entitled to the overtime compensation provided thereunder. Also see *Hearne v. U.S.*, 107 Ct. Cls. 335, Cert. denied, 331 U.S. 858.

Soon thereafter, in June 1945, the Congress passed the Federal Employees Pay Act of 1945 (59 Stat. 296), which included Sections 102d and 606 (5 U.S.C.A. 902d, 946) and Section 203 (which later became Section 205) (5 U.S.C.A. 913). The Court below relied on Sections 102d and 606 in denying petitioners' claim. However, House of Representatives Report No. 726 on H.R. 3393, 79th Congress, 1st Session, which later became the Federal Employees Pay Act of 1945, made it crystal clear that in enacting these provisions of law, the Congress had no intent of disturbing the requirements of the earlier Thomas Amendment (R. 46, 47).

Indeed, the intent of preserving the benefits of that statutory provision for wage-schedule employees, such as petitioners, was specifically stated (R. 47).

Again, as recently as 1958, the Congress (in Section 17(2) of Public Law 85-550, 72 Stat. 405) categorically preserved the requirements of the Thomas Amendment for employees of respondent (R. 55, 56). In that Act a new wage system was provided for Canal Zone employees and it explicitly provided that nothing in the new Act should affect the applicability of the Thomas Amendment to employees within its scope. Accordingly, we submit that the Circuit Court's denial of petitioners' claims conflicts with or ignores not only this Court's decision in the *Tonjisha* case, but also the repeated expressions of the Congress with respect to the applicability of the Thomas Amendment to petitioners.

3. The Circuit Court erred in holding that Sections 602d and 606 of the Federal Employees Pay Act applied to petitioners and has thus denied the benefits of the Thomas Amendment to a large group of Federal employees. As enacted, Section 606 permitted "vessel" employees of the Panama Railroad Company to be compensated in accordance with wage practices in the maritime industry. But the petitioners herein were then employed by another agency, the Panama Canal, and as a matter of fact have never been employed by the Panama Railroad Company.

The Comptroller General in 31 Comp. Gen. 87 (Sept. 12, 1951), after petitioners had been transferred to the new agency, affirmed the view respondent itself had expressed

---

* The Act of September 26, 1950, ch. 1049, 64 Stat. 1038, created a new Government agency, the Panama Canal Company, and on July 1, 1951, petitioners were transferred to employment by this new agency. References to statutes to the Panama Canal and the Panama Railroad Company were changed to Panama Canal Company with no expression of intent by the Congress that the applicability of the Thomas Amendment to petitioners was affected. To the contrary, Public Law 85-550, 72 Stat. 405, as late as 1958, reaffirmed its protection to Canal Zone employees.

in its letter of August 13, 1951, that Section 102d of the 1945 Pay Act (5 U.S.C.A. 902d) was enacted to apply to employees on ships operated by the Panama Railroad Company.[1] The scope of that statutory provision was no broader in 1951, we submit, than when it was passed in 1945 and did not serve in 1951 to bring within its terms employees, such as petitioners, who had never been employed on vessels of the Panama Railroad Company (R. 48). This intent is further evidenced by the complete exemption from the provision of Section 606 of the Federal Employees Pay Act of 1945 provided by Section 102c (5 U.S.C.A. 902c) for employees whose basic compensation is fixed and adjusted by wage boards or similar administrative authorities. (Such employees are clearly subject to the Thomas Amendment (R. 53, 54, 78). *U.S. v. Townsley*, supra, *Hearns v. U.S.*, supra.) Inasmuch as petitioners fall squarely within the plain language of Section 102c (5 U.S.C.A. 902c), they would not be subject to any provisions of Chapter 18 of Title 5 other than Sections 203 (5 U.S.C.A. 913) which applies only to monthly and per annum employees and 607 (5 U.S.C.A. 947) which has been repealed.

4. The Court of Appeals erroneously found that a repugnancy exists between the requirements of the Thomas Amendment and Sections 102d and 606 of the 1945 Pay Act. The Thomas Amendment establishes a forty-hour week and requires payment of time and one-half overtime compensation for hours worked in excess of that standard. Section 606 *permits* vessel employees to be compensated in accordance with wage practices in the maritime industry.

It is perfectly clear that no prohibition exists in Sections 102d or 606 preventing a forty-hour week or the payment

[1] The Panama Railroad Company at that time operated a shipping line between the Canal Zone and the United States and the Commission's report relied that it was to "vessel" employees on this shipping line that sections 102d and 606 were intended to apply.

of overtime for all hours of work, including the water-borne travel involved here, as required by the Thomas Amendment. Indeed, respondent has computed such over-water travel in the forty-hour workweek and paid for same for others of its vessel employees, namely, those in its Navigation Division working on tugs (R. 41, 85; App. B 19).

This Court and other Courts have specifically ruled that where there may be some overlapping of two or more compensation statutes, both should apply unless "one Act makes it impossible to comply with the other." *Powell v. U.S. Cartridge Co.*, 339 U.S. 497, 519-520. Also see *Walling v. Patton Tulley Transp. Co.*, 134 F. 2d 945, 948. There is certainly no barrier here to the application of both statutory provisions. For, despite respondent's contentions with regard to Section 606, petitioners receive benefits conferred by the Federal Employees Compensation Act (39 Stat. 742; 63 Stat. 854; 5 U.S.C.A. 751 et seq.), the Civil Service Retirement Act (63 Stat. 475, 5 U.S.C.A. 740), the Federal Unemployment Compensation Act (68 Stat. 1130), and the Government Employees Group Life Insurance Act (68 Stat. 736, 5 U.S.C.A. 2091). None of such benefits are required by wage practices in the maritime industry under Section 606.

5. The majority of the lower Court also held that the Thomas Amendment was impliedly superseded or repealed by the later provisions of Sections 102d and 606 of the 1945 Pay Act because they were specific and the Thomas Amendment was general. The dissenting opinion of Judge Rives adequately and persuasively demolishes this view (App. B 18-20). Without question, the variety of occupations on vessels is less specific than the limited group of trades and occupations whose compensation is fixed by wage boards or other wage-fixing authorities. Significant also is the limited area of overtime dealt with by the Thomas Amendment,

while Sections 102d and 606 cover the entire gamut of compensation pay and practices in the whole maritime industry.

The cardinal rule of statutory construction is against repeals by implication and in favor of giving effect to each of two statutes when that can reasonably be done. *Sinclair Refining Co.* v. *Atkinson*, (1962), 370 U.S. 195, 8 L. ed. 2d 440, 446; *F.T.C.* v. *A.P.W. Paper Co., Inc.*, 328 U.S. 193, 202, 203; *U.S.* v. *Borden Co.*, 308 U.S. 188, 198, 199; *Helvering* v. *Bliss*, 293 U.S. 144, 151; *General Motors Acceptance Corp.* v. *U.S.*, 286 U.S. 49, 62; *Posadas* v. *National City Bank*, 296 U.S. 497, 504. It is evident that here there exists no clear and manifest intent by the Congress to repeal the Thomas Amendment in its applicability to petitioners. *Red Rock* v. *Henry*, 106 U.S. 596, 601; 602.

6. The District Court, relying on the decision of this Court in *Tennessee Coal, Iron & Ry. Co.* v. *Muscoda Local No. 123*, 321 U.S. 590, held that the over-water travel performed by petitioners for respondent has all of the indicia of work and is compensable (R. 38-41, 79-85). Since petitioners are not subject to the Portal-to-Portal Act, 61 Stat. 84, 5 U.S.C.A. 251-262, the District Court's determination fully accords with authoritative rulings. The Circuit Court failed to pass on this issue. Petitioners are, and have for many years, been required to perform these duties without compensation, while their fellow employees working on respondent's tugboats are paid for similar, if not identical, duties (R. 41, 85). It is highly desirable that the Court, in justice to petitioners, review and determine this issue.

7. The Court of Appeals found that the District Court held petitioners subject not only to the Thomas Amendment, but also to Section 248 of Title 2 of the Canal Zone Code. (App. B p. 14). The question of petitioners' entitlement to compensation under this statutory provision was not

certified to the Court of Appeals under 28 U.S.C.A. 1292b (R. 101). Consequently, in view of its adverse judgment with respect to the applicability of the Thomas Amendment, it was error for the Circuit Court not to have remanded the case to the District Court for further proceedings under Section 248 of Title 2 of the Canal Zone Code. This constitutes a denial of due process.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

CHARLES E. RAMIREZ,
P. O. Box 86,
Balboa, Canal Zone,

WILLIAM S. TYSON,
821-15th Street, N. W.,
Washington 5, D. C.
Counsel for Petitioners.

May 7, 1963

APPENDIX A

Statutes Involved

1. Section 23 of the Act of March 28, 1934, popularly known as the Thomas Amendment, is as follows:

> "The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be re-established and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: Provided, that the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one-half." 5 U.S.C.A. Section 673c.

2. Sections 102(c), 102(d) and 606 (5 U.S.C.A. 902c, 902d, 946) of the Federal Employees Pay Act of 1945, are as follows:

> Section 102c: "Sections 84, 663, 667, 672a, 673 of this title, and this chapter, except sections 913 and 947 of this title, shall not apply to employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose." 5 U.S.C.A. 902c.
>
> Section 102d: "Sections 84, 663, 667, 672a, 673 of this title, and this chapter except sections 946 and 947 of this title, shall not apply to employees of the Transportation Corps of the Army of the United States on vessels operated by the United States, to vessel employees of the Coast and Geodetic Survey, to vessel employees of the Department of the Interior, or to vessel employees of the Panama Canal Company." 5 U.S.C.A. 902d.

Section 606: "Vessel Employees. Employees of the Transportation Corps of the Army of the United States on vesels operated by the United States, vessel employees of the Coast and Geodetic Survey, vessel employees of the Department of the Interior, and vessel employees of the Panama Canal Company, may be compensated in accordance with the wage practices of the maritime industry." 5 U.S.C.A. 946.

3. Section 248(e) of Title 2, Canal Zone Code is as follows:

"The corporation (Panama Canal Company) shall have and may exercise the following general powers, in addition to those elsewhere conferred in this article:

. . . . . .

(e) May appoint such officers, agents, attorneys, and employees as may be necessary for the conduct of the business of the corporation, define their authority and duties, fix their compensation, delegate to them such of the powers of the corporation as may be necessary, require that such of them as it may designate be bonded, and fix the penalties and pay the premiums of such bonds. Persons employed by the corporation whose compensation is paid on any basis other than a per annum basis shall not be included in making computations pursuant to the provisions of section 607 (Repealed 64 Stat. 843) of the Federal Employees Pay Act of 1945. The provisions of section 82 of this title, as amended, shall apply to the corporation and to its officers and employees. Canal Zone Code Section 248, 48 Stat. 1122, 62 Stat. 1076, 64 Stat. 1041."

APPENDIX B

UNITED STATES COURT OF APPEALS—FOR THE FIFTH CIRCUIT

No. 19116

PANAMA CANAL COMPANY, *Appellant*,

versus

SPENCER M. ANDERSON, ET AL., AND ARTHUR MORGAN, ET AL., *Appellees*.

Appeal from the United States District Court for the District of the Canal Zone

(January 9, 1963)

Before TUTTLE, Chief Judge, and RIVES and JONES, Circuit Judges.

JONES, Circuit Judge: The Panama Railroad Company was incorporated in New York in 1849. From 1905 until 1949, when it was dissolved, all of its stock was owned by the United States. The appellant corporation, Panama Canal Company, herein generally referred to as the Company, was created by the Panama Canal Company Act which the Congress enacted in 1948 and which is now Sections 245 to 258 of the Canal Zone Code. The Company is the successor to the Panama Railroad Company. Its stock, like that of its predecessor, is wholly owned by the United States. The appellees, 171 in number, are or have been employees of the Company, working at hourly rates of pay aboard the dredges, tugs, launches and perhaps other floating equipment of the Company. These employees, for the most part, travel from some pick-up point in the neighborhood of their residence to a dock or landing. All of the appellee-employees are transported by the Company on its launches to the equipment where they are employed. The time of water-borne travel of the employees depends, of course, upon the distance from dock or landing to dredge or other equipment, and ranges from ten minutes to two hours. The employees are compen-

sated at an hourly pay rate for weekly pay periods of forty hours with time and a half for overtime. The time for which wages are paid includes only that spent in the performance of the duties of the employees on the equipment to which they have been assigned. It does not include any time spent in traveling to or from the equipment over either water or land. The appellees brought suit in the District Court of the Canal Zone claiming that they were entitled to recover additional compensation for their travel time. The court held that the time spent in waterborne travel was compensable but the time spent in overland travel was not. The court, being anxious to avoid computing the additional wages of the multitude of plaintiffs in the event of error in its determination that waterborne travel time was work time for which wages were payable, certified the question to this Court under the statutory provision for interlocutory appeals. 28 U.S.C.A. § 1292(b).

The district court made a determination that the employee-appellees are subject to the so-called Thomas Amendment[1] and to Section 248 of Title 2, Canal Zone Code, as amended.[2] It was held that the appellees are not

[1] "The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be re-established and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: Provided, that the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one-half." 5 U.S.C.A. § 673 c.

[2] "The corporation [Panama Canal Company] shall have and may exercise the following general powers, in addition to those elsewhere conferred in this article:

(e) May appoint such officers, agents, attorneys and employees as may be necessary for the conduct of the business of the corporation, define their authority and duties, fix their compensation, delegate to them such of the powers of the corporation as may be necessary, require that such of them as it may designate be bonded, and fix the penalties and pay the premiums of such bonds. Persons employed by the corporation whose compensation is paid on any basis other than a

subject to sections 162 (d),[3] 205,[4] or 607[5] of the Federal Employees Pay Act as amended.

The questions, as presented by the interlocutory appeal and as framed by the district court, are:

(a) Are the plaintiffs as a group, or are any of them individually, subject to section 23 of the Act of March 28, 1934, 48 Stat. 522, 5 U.S.C.A. 673c?

(b) Does the time spent by plaintiffs in traveling by means of defendant's water-borne conveyances over the Panama Canal and contiguous waters (under the state of facts found by the district court in its opinion of April 26,

---

per annum basis shall not be included in making computations pursuant to the provisions of section 607 [Repealed 64 Stat. 843] of the Federal Employees Pay Act of 1945. The provisions of section 82 of this title, as amended, shall apply to the corporation and to its officers and employees." Canal Zone Code § 248, 48 Stat. 1122, 62 Stat. 1076, 64 Stat. 1041.

[3] "This Act, except sections 606 and 607, shall not apply to employees of the Transportation Corps of the Army of the United States or vessels operated by the United States, to vessel employees of the Coast and Geodetic Survey, to vessel employees of the Department of the Interior, or to vessel employees of the Panama Canal Company." 5 U.S.C.A. § 902(d).

[4] "Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 23 of the Act of March 28, 1934 [5 U.S.C.A. § 673c]. The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows:

"(a) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic rate of compensation by two thousand and eighty and multiply the quotient by one and one-half; and

"(b) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic rate of compensation by twelve to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two thousand and eighty, and multiply the quotient by one and one-half." 5 U.S.C.A. § 913.

[5] "Employees of the Transportation Corps of the Army of the United States on vessels operated by the United States, vessel employees of the Coast and Geodetic Survey, vessel employees of the Department of the Interior and vessel employees of the Panama Canal Company, may be compensated in accordance with the wage practices of the maritime industry." 5 U.S.C.A. § 946.

1961) constitute regular hours of labor within the meaning of Section 23 of the Act of March 23, 1934; 48 Stat. 522, 5 U.S.C.A. § 673c?

More briefly stated, the question which this Court has undertaken to answer is whether the Thomas Amendment requires that the appellees be paid for their over-water travel time as constituting regular hours of labor.

The question presented is one of statutory construction. Where there are two or more statutes dealing with the same subject they are to be read in pari materia and harmonized, if possible. If there is any repugnancy between them the specific or particular statute will control over and supersede a general statute even though the general measure be more recently enacted. Sutherland, Statutory Construction 3rd Ed. 541, § 5204, 82 C.J.S. 839, Statutes § 369; *Bulova Watch Company v. United States*, 365 U.S. 753, 81 S. Ct. 864, 6 L. Ed. 2d 72; *Euzor v. United States*, 5th Cir. 1959, 262 F. 2d 172, cert. den. 359 U.S. 953, 79 S. Ct. 740, 3 L. Ed. 2d 761; *Price v. United States*, 5th Cir. 1934, 74 F. 2d 120, cert. den. 294 U.S. 720, 55 S. Ct. 549, 79 L. Ed. 1252, reh. den. 295 U.S. 767, 55 S. Ct. 643, 79 L. Ed. 1708. Section 606; 5 U.S.C.A. § 946, supra, is a specific statutory provision dealing with particular employee groups including vessel employees of the Panama Canal Company. If, as seems to be established, the appellees are vessel employees of the Panama Canal Company, and if, as seems also to have been established, it is not the wage practice in the maritime industry to compensate vessel employees for the time spent in over-water travel to and from the vessel on which they are employed, there is, in our opinion, a repugnancy between the specific terms of Section 606 and the general provisions of the Thomas Amendment and the canons of construction give the precedence to the specific statute.

The district court rejected the view that the specific legislation governed and, in its opinion, said:

> "Prior to June 30, 1951, [when much of the functions and many of the employees of the Canal Zone government were taken over by the Panama

> Canal Company] plaintiffs were as has been stated, employees not of the 'Company' but of the unincorporated entity, the Panama Canal, and Congress in passing specific legislation [in 1945] for 'vessel employees' of the Company could not have had them in mind." 194 F. Supp. 765, 786.

To us it would appear that Congress, in enacting the specific provisions relating to vessel employees, would not have intended to require different wage treatment for employees doing identical work under the same circumstances and conditions dependent upon whether the particular workman had been hired before or after the vessel employee statute was enacted. The adherence to this view requires us to reject the construction placed upon the enactments by the district court.

The appellant urges that the appellees are not wage-board employees under the Thomas Amendment and hence are not entitled to its benefits. It contends that the Thomas Amendment is applicable only to employees of corporate agencies of the United States whose compensation is fixed on an annual or monthly basis and does not apply to such employees as the appellees who are paid by the hour. Even if the Thomas Amendment applies to the appellees, it is said by the appellant that we must reverse the district court and sustain the administrative finding of the appellant that over-water travel time does not constitute hours of labor within the meaning of the Amendment. This, it says, follows because the administrative finding cannot be overturned in the absence of a finding of an abuse of discretion; and because, in any event, the travel to the job site is not contemplated or included within "hours of labor". Since we have decided that the district court's determination must be reversed upon a more basic and fundamental principle of statutory construction, these questions do not require our consideration.

The judgment of the district court is

Reversed.

RIVES, Circuit Judge, Dissenting:

I have difficulty with the majority's easy classification of the Thomas Amendment as a "general measure" and Section 606, 5 U.S.C.A. § 946, as the controlling "specific or particular statute." To me that differentiation seems to depend on the subjective point of view as to which matter appears more important to each judge. True, Section 606 deals particularly with the compensation of "vessel employees of the Panama Canal Company." That, however, includes both those engaged in "the several trades and occupations" and also others, such as ship's doctors, professionals, administrative and clerical employees. On the other hand, the Thomas Amendment relates to the compensation of only those employees who are engaged in "the several trades and occupations."[1] Of more importance, the Thomas Amendment deals specifically with the subject of overtime for more than forty hours per week of regular hours of labor, which can possibly be covered by Section 606 only by reference to one of "the wage practices of the maritime industry."

The classification of one statute as a "general measure" and the other as a "specific or particular statute," becomes unnecessary if we agree with the following reasoning of the able and careful district judge:

> ". . . I find nothing repugnant in the application of both the Thomas Amendment and Section 102(d) and 606 of the 1945 Pay Act to plaintiffs. In the first they are given an overtime guarantee that is general

[1] In Townsley v. United States, 101 Ct. Cls. 237, the U.S. Court of Claims held that employees of the Panama Canal employed on dredges were engaged in one of the "trades and occupations" within the meaning of the Thomas Amendment. The Supreme Court agreed in United States v. Townsley, 323 U.S. 557, 559. Mr. Justice Roberts, speaking for the Court, with reference to the dredge employee in that case, stated:

> "The Court of Claims held that he was engaged in one of the 'trades and occupations' whose compensation is set by wage boards or other wage-fixing authorities' covered by the Act. We think this conclusion is right and do not understand the petitioner now to contest it."

to all employees fitting the terms of the Act and in the other they 'may' be compensated in accordance with wage practices of the maritime industry. It does not necessarily follow that an act setting up the right of defendant to follow a program of payment in accordance with that utilized at sea should deprive plaintiffs of the benefits of an over all premium pay statute under which they qualify."

That reasoning seems sound and in accord with the cardinal rule against repeals by implication and in favor of giving effect to each of two statutes when that can reasonably be done. In dealing with problems much like that confronting us, the Sixth Circuit found no difficulty in reconciling the Eight-hour Law Amendment with the Fair Labor Standards Act,[2] and the Supreme Court held that the Walsh-Healey Act did not preclude the application of the Fair Labor Standards Act to employees under the same contract.[3] That the same principle is applicable to the present case is demonstrated by the district court's finding of fact No. 27:

"27. Defendant has acknowledged as hours of work and paid for travel performed by tugboat employees in its Navigation Division. During the past six or seven years more than 100 employees in defendant's Navigation Division have been paid for their travel time. The water-borne conveyances which transport Navigation Division employees during their travel are of the same type as those used by defendant to transport plaintiffs. The travel performed by the Navigation Division employees is similar, if not identical to that performed by other employees on defendant's floating equipment, including plaintiffs in its Dredging Division."

---

[2] Walling v. Patton-Tulley Transportation Co., 6 Cir., 1943, 134 F. 2d 945, 948.

[3] Powell v. U. S. Cartridge Co., 1950, 339 U.S. 497, 519, 520.

In other respects I agree with the able and thorough opinion of the district court, and must therefore respectfully dissent.

A true copy

Test: Edward W. Wadsworth

Clerk, U.S. Court of Appeals, Fifth Circuit

By Clara R. James
Deputy

February 27, 1963.

New Orleans, Louisiana

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

October Term, 1961

No. 19,116

D. C. Docket No 4784 and 4797 Civil

PANAMA CANAL COMPANY, *Appellant*,

versus

SPENCER M. ANDERSON, ET AL., AND ARTHUR MORGAN, ET AL., *Appellees*.

Appeal from the United States District Court for the District of the Canal Zone.

Before TUTTLE, Chief Judge, and RIVES and JONES, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the District of the Canal Zone, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed. "Rives, Circuit Judge, Dissents"

January 9, 1963.

Issued as Mandate:

[464] - Jones

(February 11, 1963)

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 19,116

PANAMA CANAL COMPANY, *Appellant*,

versus

SPENCER M. ANDERSON, ET AL., AND ARTHUR MORGAN, ET AL., *Appellees*.

Appeal from the United States District Court for the District of the Canal Zone.

ON PETITION FOR REHEARING

Before TUTTLE, Chief Judge, and RIVES and JONES, Circuit Judges.

PER CURIAM:

IT IS ORDERED That the petition for rehearing in the above numbered and entitled cause be, and the same is hereby DENIED.

RIVES, Circuit Judge, Dissents.